Supreme Court, U.S.
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NO. _____

INS NO. A70 818 783

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

Elisabeta Gosu—PETITIONER,

v.

U.S. Immigration & Naturalization Service—RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Elisabeta Gosu

10425 Walker Rd.
Beaverton, Oregon 97006
(503) 292-8893

QUESTION PRESENTED

Whether the U.S. Circuit Court for the Ninth Circuit erred in denying my *Petition for Review* by failing to find that there is a lack of substantial evidence in the Record to support the Board of Immigration Appeals' finding that my life was never threatened, where I credibly described the deaths of my sister-in-law's family and death threats from the Romanian police and security force.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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ON PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OPINIONS BELOW

The opinion of the court of appeals is unreported. The opinion of the Board of Immigration Appeals is unreported.

JURISDICTION

The court of appeals entered its judgment on April 24, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The Ninth Circuit decision was entered on April 24, 1998.

STATUTORY PROVISIONS INVOLVED

The Immigration and Nationality Act ("Act") provides for aliens to apply for asylum and withholding of deportation by authorizing the Attorney General—in her discretion—to grant asylum to an alien who is unable or unwilling to return to his home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" (8 U.S.C. § 1158(a)) and by requiring the Attorney General to withhold deportation of an alien who demonstrates that his "life or freedom would be threatened" on account of one of the listed factors if he is deported (8 U.S.C. § 1253(h)).

STATEMENT

I was denied asylum as a result of a hearing before an

immigration judge ("IJ"), and the judge's oral decision is attached as Appendix C. I appealed that decision to the Board of Immigration Appeals ("Board"), and the Board dismissed the appeal (opinion attached at Appendix B). I then sought review of the Board's dismissal, but the Ninth Circuit dismissed in part and denied in part (memorandum opinion attached as Appendix A).

I described in block 11 on my *Request For Asylum In The United States* (INS Form I-589; part of the administrative record) that my religion is "Seventh-Day Adventist." I explained my fear of persecution thus: "If I return to my home country I think it would happen to me what happened to my sister-in-law, her husband and their boy who all were found dead in their house in Cimpina, Romania. So I ground my fear on the tragic experience of my relatives." As an "additional statement" on the asylum request form, I explained further: "When we, as part of the family, insisted that the authorities should clarify my relatives' case, the Police and Securitate wanted us not to ask any investigations about our relatives, otherwise we risk to have their fate." The INS Asylum Officer who initially reviewed my application failed to address my fear based on the deaths of my sister-in-law's family. *See* A.R. 73-74.

The IJ rendered an oral decision denying my application for asylum based on religious persecution. The IJ concluded that my life "has never been threatened for any political or religious belief" and then concluded that I had not met my burden of establishing that I have a well-founded fear of persecution.

Where voluntary departure was granted and the person appeals to federal court, the period of voluntary departure runs from the issuance of the mandate. *See Contreras-Aragon v. INS*, 852 F.2d 1088 (9th Cir. 1988) (*en banc*). The Board granted me thirty (30) days of voluntary departure. Appendix B at 3.

REASONS FOR GRANTING THE PETITION

The decision by the Ninth Circuit is erroneous. As the INS Asylum Officer had done in the Officer's review of my case, the IJ, the Board, and the Ninth Circuit all failed to address the primary source of my fear of persecution—the deaths of my sister-in-law's family and the ensuing death threats by Romanian police and security forces.

The Board's factual findings should be upheld if "supported by reasonable, substantial, and probative evidence on the record considered as a whole." *Aruta v. INS*, 80 F.3d 1389, 1393 (9th Cir. 1996) (quoting *Elias-Zacarias*, 502 U.S. 478, 481 (1992)). At every

level of factfinding and review thus far, the record has not been considered as a whole, and the failure to address the deaths of my sister-in-law's family renders the evidence relied upon insubstantial.

The BIA's denial of asylum "can be reversed only if the evidence presented by [the alien] was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed." *Aruta*, 80 F.3d at 1393. A reasonable factfinder would have considered my account in my application of my life being threatened by the Romanian police and "Securitate" and would have concluded on that basis that fear of persecution existed. The Board—and then the Ninth Circuit—compounded the error by the INS Asylum Officer and the IJ of ignoring or overlooking that information, and thus the Ninth Circuit's decision should be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

ELISABETA GOSU

Elisabeta Gosu

Date: 6/8/98

APPENDIX A
NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Stamp: "DOCKETED"] [Stamp: "FILED APR 24 1998 CATHY A. CATTERSON, CLERK U.S. COURT OF APPEALS]

ELISABETA GOSU, Petitioner, v. IMMIGRATION AND NATURALIZATION SERVICE, Respondent.	)	No. 97-70295 INS No. A70-818-783 MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals
Submitted April 20, 1998**

Before: BRUNETTI, RYMER, and T.G. NELSON, Circuit Judges.

Elisabeta Gosu, a native and citizen of Romania, petitions for review of the decision of the Board of Immigration Appeals ("BIA") affirming the immigration judges's denial of her application for asylum and withholding of deportation under 8 U.S.C. §§ 1158(a) and 1253(h).

Gosu contends that the BIA erred by failing to address the deaths of three of her family members as the basis of her fear of persecution. Because Gosu failed to raise this issue before the

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

BIA, we lack jurisdiction to consider it. See Rashtabadi v. INS, 23 F.3d 1562, 1567 (9th Cir. 1994). To the extent Gosu contends that the BIA erred by denying her application for asylum and withholding of deportation, w conclude that that decision is supported by substantial evidence. See Ramos-Vasquez v. INS, 57 F.3d 857, 861 (9th Cir. 1995).

PETITION FOR REVIEW DENIED in part and DISMISSED in part.

APPENDIX B

U.S. Department of Justice
Executive Office for
Immigration Review

Decision of the Board of
Immigration Appeals

Falls Church, Virginia 22041

File: A70 818 783 - Portland

Date: [Stamp: "FEB 26 1997"]

In re: ELISABETA GOSU

IN DEPORTATION PROCEEDINGS
APPEAL
ON BEHALF OF RESPONDENT: Alexa L. Forté, Esquire
50 S.W. 2nd Ave., Suite 400G
Portland, Oregon 97204

ON BEHALF OF SERVICE: Thomas L. Day
Assistant District Counsel

CHARGE:
Order Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] - Nonimmigrant - remained longer than permitted
APPLICATION: Asylum; withholding of deportation

ORDER:

PER CURIAM. In a decision dated May 22, 1996, the Immigration Judge found the respondent deportable as charged, denied her applications for asylum and for withholding of deportation, and granted her voluntary departure. The respondent has appealed from that decision. The appeal will be dismissed.

The respondent testified that she is a 55-year-old female native and citizen of Romania, who entered the United States on March 3, 1993, and that she was admitted as a visitor. The respondent fears that she will be harmed by government authorities on account of her religion.

The respondent testified that she lived in Cimpina and worked in that area as a secretary/bookkeeper for a transportation company for the eighteen year period prior to leaving her country. The respondent stated that she is a Seventh Day Adventist, she refused to work on Saturdays, a religious holiday. The respondent stated that because of the foregoing she was fired one occasion in 1988, and since that time was threatened by her employer on several occasions with being laid off. The respondent stated that she continued to work; that she retired in March, 1992; and that she received a pension. The respondent stated that she is afraid that it

would be difficult to return to her country because of her religion.

[2]

The respondent also stated that she is afraid to return because her husband was video taped at a public demonstration during the revolution in 1989. The respondent also stated that she received harassing telephone calls in 1992 and 1993 before her departure.

Based upon our review of the record we find that the respondent has not demonstrated past persecution or satisfied the well-founded fear standard of eligibility required for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158. See INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). She has not shown that a reasonable person in her circumstances would fear persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. See Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 987).

The events the respondent described do not constitute past persecution. Although the treatment that the respondent received at her place of employment was unfortunate and perhaps discriminatory in nature, it does not rise to the level of persecution. See Cuadras v. INS, 910 F.2d 567 (9th Cir. 1990); Sabello-Cortez v. INS, 761 F.2d 1259, 1264 (9th Cir. 1985); Raass v. INS, 692 F.2d 596 (9th Cir. 1982).

The respondent also claims to have a fear of future persecution. It does not appear that the authorities would have the inclination to cause the respondent the harm that she fears on account of her religion. The respondent did not provide any evidence that Seventh Day Adventists are in fact targeted by government authorities or by anyone else on account of their religion. In addition, a search of various country condition reports fails to indicate anything to the contrary. See Romania-Profile of Asylum Claims and Country Conditions, February 1995 (Ex. 3). Although Department of State Country Reports on Human Rights Practices for 1994, (p. 930) (1994), states that occasional harassment by low-level local authorities against some small Protestant denominations does occur, it also states that the Government does not generally impede the observance of religious belief.

The respondent's fear that she may be harmed because the government authorities had video taped her husband at a public demonstration during the Revolution in 1989, does not rise to the level of a well-founded fear of persecution. The record does not establish that the respondent or her husband even suffered any adverse consequences from this event. The respondent also acknowledged in her testimony that she had no fear of the government. Tr. at 27. The respondent alleged that she was

subjected to harassing telephone calls in 1992 and 1993 after her husband left for the United States but she testified that these calls, which were by anonymous callers, were personal in nature. The record does not show that these calls were motivated by the respondent's religious beliefs or political beliefs, imputed or otherwise.

Inasmuch as the respondent has failed to satisfy the lower burden of proof required for asylum, it follows that she has also failed to satisfy the clear probability standard of eligibility required for withholding of deportation. See Matter of Mogharrabi, supra.

[3]

Accordingly, the appeal concerning the denial of the respondent's applications for asylum and withholding of deportation is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and in accordance with our decision in Matter of Chouliaris, 16 I&N Dec. 168 (BIA 1977), the respondent is permitted to depart from the united [*sic.*] States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigrations judge's order.

[Signature]

FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

File No.: A 70 818 783

In the Matter of
ELISABETA GOSU,)
Respondent) IN DEPORTATION PROCEEDINGS
)

CHARGE: Deportability - Section 241(a)(1)(B), Immigration and Nationality Act - having remaining in the United States linger than permitted.

APPLICATION: Section 106, Immigration Nationality Act - Asylum; Section 243(h), Immigration Nationality Act - Withholding of Deportation; Section 244(e), Immigration Nationality Act - Voluntary Departure.

ON BEHALF OF RESPONDENT:
Pro se

ON BEHALF OF SERVICE:
Flavio Escobar, Esquire
INS
Portland, Oregon

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 56-year-old female native and citizen of Romania who entered the United States at or near Seattle, Washington on or about March 3, 1993. At that time, she was admitted as an non immigrant visitor for pleasure with authorization to remain int he [*sic.*] United States for a temporary period not to exceed September 2, 1993. The respondent remained in the United States longer than permitted. Subsequently, the respondent was placed in deportation proceedings. At deportation

[2]

proceedings, the respondent admitted that the allegations of fact n the Order to Show Cause and conceded deportability. Based on her admissions, the Court finds the respondent deportable as charged. Her deportability has been established with evidence that is clear, convincing and unequivocal.

The respondent had applied for asylum and withholding of deportation in the alternative for voluntary departure. An alien who

apply for asylum bear the burden of establishing eligibility for the relief sought. To qualify for asylum, an alien must establish a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. An applicant for asylum has established that the fear is well founded if a reasonable person under similar circumstances would fear persecution. Matter of Mogharrabi, 119 I&N Dec. 439 (BIA 1987). In view of this standard of proof, there must be a showing that (1) the alien possesses a belief or a characteristic that a persecutor seeks to overcome in others by means of punishment of some sort; (2) persecutor is aware of could become aware that the alien possesses this belief or characteristic; (3) the persecutor has the capacity of punishing the alien; (4) the prosecutors had the inclination to punish the alien. Matter of Mogharrabi, supra. If the alien establishes the statutory qualification for asylum, alien must then show as a matter of discretion the relief should be granted.

An application for asylum is also considered to be an

application for withholding of deportation. Withholding of deportation is mandatory if an alien's life or freedom would be threatened in the country of deportation on account of race, religion, nationality, membership in a particular social group or political opinion. To establish eligibility for withholding of deportation, an alien's facts must a clear probability of persecution in the country designation for deportation on account of one of the above enumerated grounds. INS v. Stevic, 467 U.S. 407 (1984). This fear of probability standard requires a showing that it is more likely than not that an alien would be subject to persecution if returned to the country if the alien seeks withholding of deportation and is more difficult to meet than the well founded fear of persecution standard for asylum. INS v. Cordoza-Fonseca, 480 U.S. 421, 430 (1987).

The respondent has testified on her behalf. There is no reason to find that she has not been a credible witness. In addition, her application for asylum was admitted to the bureau of human rights and humanitarian affairs and that opinion is an exhibit in this record of proceedings. Respondent has been given an opportunity to inspect, explain and rebut that advisory opinion.

In essence the respondent has testified that she is married and has two adult children. Her husband has been in the United States since 1990 and he is seeking asylum. Her son is a historian and works at a national institution of history in

Romania. The institution is supported by the government. Thus her son is paid through the government in Romania. Her daughter is a student in the university in Melbourne, Australia.

The respondent testified that she came to the United States to be with her husband. She stated that her husband left Romania in 1990 because in 1989, he was involved in a demonstration and the demonstration was videotaped, he was alleged identified as one of the participants in that demonstration. Her husband came to the United States on May 10, 1990.

The respondent testified that she obtained an exit visa to come to the Untied States. She stated that she fears persecution because she is a member of the Seventh Day Adventist Church. As a result of that membership, she has suffered persecution. In 1963, she was fired from her employment because she refused to work on Saturdays. Soon after she was fired on December 1963, she married.

In 1966, she started working again at a small shop. A year later she was fired because she refused to work on Saturdays.

In 1967, she was hired in a textile shop, she worked three months. Thereafter, she began working for a transportation company owned by the government. She worked in that transportation company for 17 years. Because she was a member of the Seventh Day Adventist Church, she was not promoted. To the contrary, she was demoted. This was because two individuals from the communist party came to visit the company and told the

manager that he should not be having any member of the Seventh Day Adventist employed. Nevertheless, the respondent worked in that company for 17 years and retired in 1991. Upon retirement, she received a pension from the company which was owned by the government. Since the respondent left Romania, she has not been getting the benefits of her retirement in Romania.

The respondent has testified that she has never been arrested because of her religious belief. Either in 1986 or 1987, she was questioned about her religion but there was no ramifications.

She has stated that she doesn't fear the police nor any governmental agency. She stated that she got harassing phone calls because she was residing alone without her husband. These phone calls were not prompted by her religious beliefs. These phone calls were not prompted by any political beliefs either. These phone calls were more personal in nature. The record indicates that the respondent's life has never been threatened for any political or religious belief.

Based on the evidence presented, the Court cannot conclude that she has net her burden of establishing that she has a well

founded fear of persecution on any ground enumerated in the Act. There's insufficient evidence to show that there are any governmental or other individuals interested in her based on any grounds enumerated in the Act. It naturally follows that if the respondent fails to meet the lower standard for asylum that she

has failed to meet the more stringent standard for withholding of deportation.

As an alternate means of relief, the respondent has requested voluntary departure. There is nothing in the record to indicate that she is not statutorily eligible. She appear to be a sincere individual with good morals and there's no reason to deny voluntary departure to the respondent.

ORDER

IT IS HEREBY the order of the Court that the request of asylum pursuant to Section 208 of the Act is hereby denied.

IT IS HEREBY the order of the Court that the request that the withholding of deportation is hereby denied.

IT IS HEREBY the order of the Court that the request for voluntary departure be granted. The respondent is to depart the United States on or before August 22, 1996 or any extensions therefrom as granted by the District Director. If the respondent fails to depart accordingly, this order of voluntary departure shall be immediately withdrawn and respondent is ordered deported to Romania.

[Signature]

Dated: May 22, 1996

David Ayala
Immigration Judge